

## **TEACHERS' RETIREMENT BOARD MEETING** **September 23, 2005**

### **CALL TO ORDER:**

Chairman Tim Ryan called the meeting to order at 8:30 a.m., in the Teachers' Retirement Conference Room, 1500 East Sixth Avenue, Helena, Montana.

### **BOARD MEMBERS PRESENT:**

Chairman, Tim Ryan  
Mona Bilden  
Scott Dubbs  
Kari Peiffer  
James Turcotte  
Darrell Laymen

### **STAFF PRESENT:**

David L. Senn, Executive Director  
Tammy Rau, Deputy Executive Director  
Vivian Hammill, Legal Counsel  
Alison Peterson, Executive Secretary  
Johnelle Sedlock, Benefits Officer  
Bill Hallinan, Information System Manager  
Rex Merrick, Information Technology Specialist  
Karla Scharf, Retired Payroll Supervisor  
Ali Bovingdon, Legal Counsel

### **OTHERS PRESENT:**

David Ewer, Budget Director  
Sandra Denesen, MEA-MFT Retired  
Joe Brott, MTSBA  
Kelly Jenkins, MPERA  
Tom Bilodeau, MEA-MFT  
Sara Berg, MREA  
Theron Bjerke, Teacher, Savage Public Schools  
James Hovde, Teacher, Savage Public Schools  
John McNeil, Superintendent Savage Public Schools

## **FUNDING ISSUES:**

Chairman Ryan introduced David Ewer, Budget Director, to discuss the actuarial funding issues and establishing a joint issues committee made up of two representatives of each retirement board and the Board of Investments. Mr. Ewer explained the position of the Schweitzer Administration regarding benefit enhancements and that the Administration would not support legislation that creates additional unfunded liabilities and that Governor Schweitzer was committed to transferring \$100 million to the TRS to help cover the current unfunded liability. Mr. Ewer on behalf of the governor's office asked for support on establishing the joint issues committee. The Board agreed that two members should be appointed during the election of officers to the Board section of the agenda.

## **CALL TO ORDER**

Adopt Agenda -Chairman Ryan called for additions or changes to the Agenda for May 20, 2005. Seeing none, Chairman Ryan requested a motion to adopt the Agenda.

**MOTION/VOTE** Mrs. Mona Bilden moved that the agenda be approved. Seconded by Mr. Scott Dubbs, the motion carried unanimously.

Approval of May 20, 2005 Minutes - Chairman Ryan called for a motion to approve the May 20, 2005, Board meeting minutes.

**MOTION/VOTE** Mr. Scott Dubbs moved that the May 20, 2005 minutes be adopted. Seconded by Mrs. Kari Peiffer, the motion carried unanimously.

## **PUBLIC COMMENT**

Chairman Ryan called for public comment on Board related items. Tom Bilodeau from MEA-MFT commented on the need for MEA/MFT to be involved in the next CPERS (Committee on Public Employees Retirement Systems). Mr. Bilodeau also addressed the importance of fiduciary responsibility to active teachers and retirees, and the need to discuss retirement funding issues with the participants of TRS.

Chairman Ryan requested that the plan design be moved to this afternoon, The Board agreed.

## **EXECUTIVE DIRECTOR'S REPORT**

Interim Legislative Committees & Actuarial Funding:- Mr. Senn reported on the meetings with the interim committee on School Funding and State Administration and Veteran's Affairs Committee (SAVA), to discuss the issues regarding unfunded liabilities to TRS and PERS. Mr. Senn addressed the following issues that create additional unfunded liabilities: End Of Career Pay Raises, Bona Fide Separation from Service, and Benefit Swaps for Additional Salary. Also addressed was the possible \$100 million cash infusion to reduce the unfunded liabilities suggested by the Governor.

Executive Summary-Mr. Senn reported three staff changes: Ali Bovingdon has been hired to replace Vivian Hammil as legal counsel to the Board. Natalie Chamberlain was promoted from Executive Secretary to the newly created position of Payroll/Benefits Specialist in the Retired Payroll Section. Alison Peterson has been promoted to the position of Executive Secretary. The position of Administrative Assistant is open and will be closing September 30, 2005.

### **OTHER BUSINESS:**

Board Member Manual Updates- Chairman Ryan questioned the changing of the Board meetings from the second Friday in February to the third Friday. Mr. Senn replied that the second Friday of February previously had conflicts with Valentines Day and school tournaments.

**MOTION/VOTE** Mr. James Turcotte moved that the Board Member Manual update be approved. Seconded by Mr. Scott Dubbs, the motion carried unanimously.

Board on Investments Report- Mr. James Turcotte reported on the recent hiring of Mr.Cliff Sheets as the new Chief Investment Officer. Mr. Turcotte stated the board is planning on hiring a retainer consultant as an independent source to conduct studies and create benchmarks, and report their findings back to the Board. Mr. Turcotte reviewed the performance numbers; TRS rate of return for fiscal year 2005 was just over 8%.

Next Meeting Date: The Meeting date was reviewed, the Board agreed on November 18, 2005.

Financial Statements, Budget & Travel: Mrs. Tammy Rau reported that there was no delinquency report at this time. No other comments were made.

Alternate Pay Plan: Mrs. Tammy Rau reported on the Lump Sum Performance Policy that would be updated with a new rating scale to determine awards. Upon completion, the revised plan will be circulated among staff for comment and then reviewed again by the Alternative Pay Plan Committee before being presented to the Board for adoption.

A personnel committee meeting will be scheduled with CMS for November 17, 2005 for the purpose of completing the performance appraisal of the Executive Director.

Information Technology Status Report: Mr. Bill Hallinan reported as of this date Rex Merrick has currently scanned over 269,072 documents, and is currently up to "M" in scanning the deceased files. The new Web Wages and Contributions reporting system is available to employers and 80% of schools are utilizing this program.

Mr. Hallinan also reported that our Web Pages are being reconstructed. . Mr. Hallinan informed the Board this was to project a single face of government by having all government Web Pages using the same design and color scheme.

## **RETIREMENT REPORT**

Regular, Survivorship, & Adjustments The Board reviewed the Regular, Survivorship, and Adjustment Report.

## **DISABILITY APPLICATIONS**

### Executive Session to Discuss Disability Applications & Annual Reviews:

The Chair directed the meeting closed at 11:25 a.m. to review disability applications since the individual's right to privacy of information pertaining to disability benefits clearly exceeds the merits of public disclosure.

Disability Retirement Applications – The meeting was reopened to the public at 11:45 a.m.

**MOTION/VOTE** Mr. Turcotte moved that the disability application of Mr. Jerel S. Barnhart be approved. Seconded by Mrs. Peiffer, the motion carried unanimously.

**MOTION/VOTE** Mrs. Bilden moved that the disability application of Mrs. Stefanie L. Erving be approved. Seconded by Mrs. Peiffer, the motion carried unanimously.

**MOTION/VOTE** Mrs. Peiffer moved that the disability application of Mrs. Kelly F. Klein be approved. Seconded by Mr. Dubbs, the motion carried unanimously.

**MOTION/VOTE** Mrs. Bilden moved that the disability application of Mrs. Sharon M. Patacsil be approved. Seconded by Mr. Layman, the motion carried unanimously.

**MOTION/VOTE** Mr. Dubbs moved that the disability application of Mr. Vance G. Dols be approved. Seconded by Mrs. Bilden, the motion carried unanimously.

The staff recommends that the Mrs. Patricia A. Zorko a disability retiree be “excluded” from future annual earnings and medical reporting requirements.

**MOTION/VOTE** Mr. Layman moved that Mrs. Patricia A. Zorko be “excluded” from future annual earnings and medical reporting requirements. Mrs. Peiffer seconded the motion. The motion carried unanimously.

## **INDIVIDUAL MEMBER PETITIONS**

Vance Ventresca – Mr. Ventresca requested that he be allowed to withdraw his appeal of staffs' decision regarding the 10% cap. There being no objection, the Chair so ordered.

Robert Frazier 10% Cap - Mr. Frazier appealed TRS staffs' decision to deny his request for an exemption to the 10% cap statute, §19-20-715, MCA. Mr. Senn explained that the Teachers' Retirement Act, §19-20-715, MCA, provides that the amount of each year's earned compensation used in calculating average final compensation may not exceed the member's earned compensation for the preceding year by more than 10 percent, except as provided by TRS Board rules.

Effective October 29, 2004, Mr. Frazier' contract for the 2004-05 school year was increased from \$74,100 to \$100,880 to compensate for the assignment as Dean of the College of Technology, Helena. This assignment was in addition to his position as University Executive Vice President and Executive Assistant to the President on the Missoula campus. As a result of this assignment, during the 2004-05 fiscal year, Mr. Frazier held two executive level positions in two different locations.

The statement of intent included in the enabling legislation stated that in adopting the 10% cap, it was the intent of the legislature to provide equitable retirement benefits to all members of the Teachers' Retirement System based on their normal service and salary and to limit the effect on the retirement system of isolated increases received by selected individuals through promotions or one time salary enhancements during their last years of employment. The rules adopted by the Board, 2.44.518, ARM, state that the assignment of additional duties of a one time or temporary nature shall not be exempt from the 10% cap.

**MOTION/VOTE:** Mr. Turcotte moved to deny Mr. Frazier's appeal with the Board not providing an exception to the 10% cap, Seconded by Mr. Dubbs. The motion carried unanimously.

Ronald Reitz-Retirement Effective Date - Mr. Reitz appealed TRS staffs' decision to deny him benefits effective June 1, 2005.. Mr. Reitz applied for retirement benefits effective June 1, 2005 asserting he would terminate all employment eligible to participate in the TRS effective at the end of the academic year, or May 6, 2005, and therefore, eligible to begin receiving retirement benefits effective June 1, 2005. Staffs review of the record found that Mr. Reitz had not terminated all positions eligible to participate in TRS as required by 19-20-801, MCA, but had signed a summer contract which continued his employment with the University System through July 22, 2005. The Board reviewed the letters and written appeal submitted by Mr. Reitz.

**MOTION/VOTE:** Mr. Dubbs moved to deny the petition of Mr. Ronald Reitz, Seconded by Mr. Turcotte. The motion carried unanimously.

Savage Public Schools –Retirement Incentive - Savage Public Schools teachers, Theron Bjerke and James Hovde appealed TRS staff ruling that they did not terminate all employment eligible to participate in TRS, as required by §19-20-801, MCA, and therefore, were not eligible to receive retirement benefits. Also present were John McNeil, on behalf of the school board, and Sara Berg, Montana Rural Education Association legal counsel.

In April 2005, through their collective bargaining agreement, the district offered teachers a retirement option that would classify them as retired but continue to employ them at 1/3 of their average compensation. In addition they would receive additional compensation in the form of a cash incentive of \$24,000, fully paid health insurance and other fringe benefits.

TRS staff ruled that because the collective bargaining agreement continued their employment they did not terminate all employment eligible to participate in TRS, which is in violation of §19-20-801, MCA. Staff also raised questions about possible violations of IRS code 1.401-1(b)(1)(i).

Mr. John McNeil, Superintendent of Savage Public Schools stated that Ohio Retirement System allows their teachers to work and earn retirement and it doesn't break the IRS rules.

Ms. Vivian Hammil stated that Montana has different statutes than other states and different retirement systems cannot be compared.

**MOTION/VOTE:** Mr. Turcotte moved to deny the request of the Savage Public School teachers, due to language in the collective bargaining agreement continuing their employment with the district. The motion was seconded by Mrs. Peiffer, and carried unanimously.

### **LEGAL COUNSEL REPORT.**

Legal Counsel, Vivian Hammill, reported on the following cases.

Merle Ferrier case: Ms. Hammil reported that the Montana Supreme Court reversed the decision of Lewis and Clark County District Court Judge Sherlock. The Supreme Court found that the TRS statutes are presumed to be constitutional and that Mr. Farrier presented no proof that the legislature did not have a rational basis for determining that TRS must remain connected to the ORP in order to remain actuarially sound.

Vivian stated that a cross claim for repayment of funds is possible but there is pressure to settle.

Chairman Ryan asked why we should settle.

Mr. Turcotte stated there should be no compromise.

The Chair directed Counsel pursue recovering benefits Mr. Farrier received after he returned to work with the University system, plus interest.

Suspected embezzlement case: Ms. Hammill updated the board on the suspected embezzlement case. It was suspected that the signature of a deceased retired member had been forged on a change of address request subsequent to her death. One form had also been notarized. The chief investigator in Colorado discovered the suspect was working at a bank at

that time and that he had used a co-workers notary seal to notarize the signature of the deceased retiree.

Ms. Hammill reported that since the last Board meeting it was found that the suspect was back in Montana. State Investigator Shane Shaw has been provided with details of the case and is actively pursuing the suspect. Ms. Hammill stated that an arrest is eminent.

Chairman Ryan asked about the statute of limitations.

Ms. Hammill replied that the statute of limitation is 5 years and this case has been active only two years.

Joseph Baumgardner - PERS case: Mr. Kelli Jenkins of PERS Lead Counsel, provided information on the case of Mr. Baumgardner. Joseph Baumgardner sued the Public Employees' Retirement Board alleging that House Bill 294, enacted by the 2001 Montana Legislature, unconstitutionally delegated legislative power; impaired the obligation of contracts in violation of Montana Constitution Article II, Section 31; and contained more than one subject in violation of Montana Constitution Article V, Section 11(3). The Supreme Court reversed the lower court stating that because the Montana Constitution itself delegated the authority to the Board to make actuarial determinations, the District Court erred in concluding that the Legislature and H.B. 294 unconstitutionally delegated authority to the Board to make those actuarial determinations.

Mr. Senn introduced Ali Bovingdon, the new Legal Council of TRS.

**PLAN DESIGN ISSUES CONTINUED:** There was consensus among the Board that the current plan design was not likely to meet the needs of future members and that either the age based plan or the money purchase plan would be an improvement. Sandra Denesen, MEA-MFT Retired, commented that the MEA-MFT felt that they needed to see more examples of how the money purchase plan would affect future members before they could make a decision on this plan.

### **ELECTION OF OFFICERS:**

Chairman Ryan called for nominations for a Chair of the Teachers' Retirement Board. Mrs. Bilden nominated Scott Dubbs for the position of Chairman. Mr. Turcotte moved that nominations be closed and that a unanimous ballot be cast. Mrs. Kerri Peiffer seconded the motion; Mr. Dubbs was elected Chair of the TRS Board unanimously.

Chairman Ryan called for nominations for Vice-Chair. Mr. Turcotte nominated Keri Peiffer for the position of Vice-Chair. Ms. Bilden seconded the nomination and Mrs. Peiffer was elected Vice-Chair of the TRS Board unanimously.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:45 pm.

Chair \_\_\_\_\_

Executive Director \_\_\_\_\_